

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 18, 2011

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 56

Introduced by Assembly Member Hill

December 6, 2010

An act to add Sections 746, 770.5, and 770.6 to the Public Utilities Code, relating to gas corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 56, as amended, Hill. Gas corporations: rate recovery and expenditure: intrastate pipeline safety.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.

This bill would prohibit a gas corporation from recovering any fine or penalty in any rate approved by the commission. The bill would require a gas corporation to file semiannual reports with the commission and the Division of Ratepayer Advocates describing how the utility is spending moneys that the commission has authorized to be collected from ratepayers to reimburse the utility for public safety activities. The bill would require the commission, in consultation with the commission's Division of Ratepayer Advocates, to work to align ratemaking policies, practices, and incentives to better reflect safety

concerns and ensure ongoing commitments to public safety. If the commission authorizes a gas corporation to recover expenses incurred for public safety, the bill would require the commission to require the gas corporation to establish and maintain a balancing account to record the difference between the approved revenue requirements for public safety and the actual expenditures made by the utility. The bill would require a gas corporation to return moneys approved for expenditure for public safety by the commission to the balancing account, if those funds are not expended within a reasonable period of time after the commission grants approval of the public safety expenditure, as determined by the commission. The bill would require the commission to consider the safety record of a gas corporation in determining what constitutes a reasonable rate of return for the utility.

(2) The Public Utilities Act authorizes the commission to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed by specified public utilities, including gas corporations, as defined.

Existing federal law requires the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) to adopt minimum safety standards for pipeline transportation and for pipeline facilities, including an interstate gas pipeline facility and intrastate gas pipeline facility, as defined. Existing law authorizes the Secretary of Transportation to prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a state authority that submits to the secretary annually a certification for the facilities and transportation or alternatively authorizes the secretary to make an agreement with a state authority authorizing it to take necessary action to meet certain pipeline safety requirements. Existing law prohibits a state authority from adopting or continuing in force safety standards for interstate pipeline facilities or interstate pipeline transportation. Existing law authorizes a state authority that has submitted a current certification to adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed by PHMSA.

This bill would designate the commission as the state authority responsible for development, submission, and administration of a state pipeline safety program certification for natural gas pipelines. The bill

would require the commission to adopt and enforce compatible safety standards, as defined, for commission-regulated gas pipeline facilities, as defined, to accomplish specified results. The bill would require the commission to track proposed safety, reliability, and facility integrity-related projects and activities for which a gas corporation requested compensation in any rate request that was granted by the commission in order to determine if the project or activity was undertaken and completed and to require any gas corporation that fails to undertake or complete safety, reliability, and facility integrity-related projects and activities for which the commission granted recovery in rates to promptly make a public filing as to the justification for failing to undertake or complete the proposed project or activity. ~~The bill would prohibit a gas corporation from recovering in rates any uninsured expense resulting from a fire, explosion, or other catastrophic event involving a commission-regulated gas pipeline facility when that event results from acts or omissions engaged in or directed by any officer or employee of the gas corporation with either the intent to cause harm, or with knowledge that harm was substantially certain to result.~~

The bill would require the commission, by July 1, 2012, to open an appropriate proceeding or expand the scope of an existing proceeding to establish compatible emergency response standards, as defined, that owners or operators of certain commission-regulated gas pipeline facilities, as defined, would be required to follow. The standards would require owners or operators of intrastate transmission and distribution lines to implement emergency response plans, with specified requirements, that are compatible with PHMSA's regulations concerning emergency plans. The bill would require the owners of intrastate transmission lines to provide the State Fire Marshal and the chief fire official of the applicable local government with instructions on how to access and utilize the National Pipeline Mapping System developed by PHMSA to improve local response capabilities for pipeline emergencies. The bill would require the commission to report to the Legislature on the status of establishing the compatible emergency response standards on or before January 1, 2013.

(3) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission

implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 746 is added to the Public Utilities Code,
2 to read:

3 746. (a) A gas corporation shall not recover any fine or penalty
4 in any rate approved by the commission.

5 (b) A gas corporation shall file semiannual reports with the
6 commission and the Division of Ratepayer Advocates describing
7 how the utility is spending moneys that the commission has
8 authorized to be collected from ratepayers to reimburse the utility
9 for public safety activities.

10 (c) The commission, in consultation with the Division of
11 Ratepayer Advocates, shall work to align ratemaking policies,
12 practices, and incentives to better reflect safety concerns and ensure
13 ongoing commitments to public safety.

14 (d) If the commission authorizes a gas corporation to recover
15 expenses incurred for public safety, the commission shall require
16 the gas corporation to establish and maintain a balancing account
17 to record the difference between the approved revenue requirements
18 for public safety and the actual expenditures made by the utility.
19 A gas corporation shall return moneys approved for expenditure
20 for public safety by the commission, to the balancing account, if
21 those funds are not expended within a reasonable period of time
22 after the commission grants approval of the public safety
23 expenditure, as determined by the commission.

24 (e) In determining what constitutes a reasonable rate of return,
25 the commission shall consider the safety record of the gas
26 corporation.

27 SEC. 2. Section 770.5 is added to the Public Utilities Code, to
28 read:

1 770.5. (a) For purposes of this section the following terms
2 have the following meanings:

3 (1) “Class 1 location,” “class 2 location,” “class 3 location,”
4 and “class 4 location” have those meanings as defined in the
5 regulations adopted by the United States Department of
6 Transportation pursuant to Chapter 601 (commencing with Section
7 60101) of Subtitle VIII of Title 49 of the United States Code (49
8 C.F.R. 192.5, as adopted January 1, 2011, or a successor
9 regulation).

10 (2) “Commission-regulated gas pipeline facility” means an
11 intrastate gas pipeline facility, as defined in Section 60101 of Title
12 49 of the United States Code and in the regulations adopted by the
13 Department of Transportation (49 C.F.R. 192.3, as adopted October
14 1, 2010, or a successor regulation), that transports natural gas and
15 is subject to the regulatory authority of the commission, including
16 a pipeline that the commission, pursuant to subsection (c) of
17 Section 717 of Title 15 of the United States Code, has certified to
18 the Federal Energy Regulatory Commission as being subject to
19 the regulatory jurisdiction of the commission over rates and service.
20 “Commission-regulated gas pipeline facility” does not include
21 those pipelines that are excluded from regulation by the Federal
22 Energy Regulatory Commission pursuant to subsection (b) of
23 Section 717 of Title 15 of the United States Code because they are
24 facilities used for the distribution of natural gas.

25 (3) “Compatible safety standards” means additional or more
26 stringent safety standards for commission-regulated gas pipeline
27 facilities that are compatible with the minimum safety standards
28 adopted by the Department of Transportation pursuant to Chapter
29 601 (commencing with Section 60101) of Subtitle VIII of Title 49
30 of the United States Code and which the commission is authorized
31 to adopt pursuant to subsection (c) of Section 60104 of that chapter.

32 (4) “High consequence area” has the same meaning as defined
33 in the regulations adopted by the United States Department of
34 Transportation pursuant to Chapter 601 (commencing with Section
35 60101) of Subtitle VIII of Title 49 of the United States Code (49
36 C.F.R. 192.903, as adopted January 1, 2011, or a successor
37 regulation).

38 (b) The commission shall be the state authority responsible for
39 the development, submission, and administration of a state pipeline
40 safety program certification for natural gas pipelines pursuant to

Chapter 601 (commencing with Section 60101) of Subtitle VIII of Title 49 of the United States Code.

(c) The commission shall adopt and enforce compatible safety standards for commission-regulated gas pipeline facilities to accomplish all of the following:

(1) Require the owner or operator to make an annual performance measure report to the commission concerning the condition of commission-regulated gas pipeline facilities. The performance measure report shall include the total number of anomalies identified as a result of safety assessments, the total number of conditions repaired, and the actual anomalies needing repair that are identified by the pipeline owner or operator during the inspections, the conditions requiring repair, and any other information the commission determines is necessary to evaluate the safety and performance of the pipeline facilities. The annual performance measure reports shall be made publicly available on the Internet to the extent that doing so does not create a public safety risk. The commission shall consult with the federal Department of Homeland Security in determining what information may be made available without creating a public safety risk.

(2) Require the owner or operator to evaluate the integrity of all commission-regulated gas pipeline facilities outside high consequence areas and to include this evaluation as part of their safety assessment reports.

(3) Require the owner or operator of commission-regulated gas pipeline facilities to conduct outreach and public education relative to excavation dangers and the availability of the one-call notification program in order to reduce dangerous incidences caused by third-party excavations.

(4) Require the owner or operator of commission-regulated gas pipeline facilities to prioritize those facilities that, because of their proximity to an earthquake fault zone delineated by the State Geologist pursuant to the Alquist-Priolo Earthquake Fault Zoning Act (Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code), should be subject to heightened safety oversight. The commission shall develop protocol to ensure the safety of those pipelines that are located in an earthquake fault zone and in a high consequence area.

(5) The commission, in consultation with the independent review panel appointed to investigate the San Bruno natural gas pipeline

1 explosion of 2010, shall develop minimum criteria and standards
2 for the installation of sectionalized block valves and automated
3 and remote shutoff valves, taking into consideration weather-related
4 and outside faces, operating pressure, the rate of potential release
5 of natural gas, the potential for ignition of the gas, and accessibility.
6 The commission shall establish a timeline by which the owner or
7 operator of a commission-regulated gas pipeline facility shall meet
8 the minimum criteria and standards established by the commission,
9 unless technically unfeasible, for each of the following:

10 (A) Each commission-regulated gas pipeline facility that is first
11 placed in service or replaced.

12 (B) Each commission-regulated gas pipeline facility that
13 traverses an earthquake fault zone designated by the State Geologist
14 pursuant to the Alquist-Priolo Earthquake Fault Zoning Act
15 (Chapter 7.5 (commencing with Section 2621) of Division 2 of
16 the Public Resources Code).

17 (C) Each commission-regulated gas pipeline facility that is in
18 a class 3 location, class 4 location, or high consequence area.

19 (6) Require the owner or operator of all commission-regulated
20 gas pipeline facilities that are in a class 3 location, class 4 location,
21 or high consequence area to establish a maximum allowable
22 operating pressure for the facility. The maximum allowable
23 operating pressure shall be established by conducting a hydrostatic
24 pressure test, unless the commission determines that the owner or
25 operator has adequately established a maximum allowable
26 operating pressure using either of the following:

27 (A) Prior hydrostatic testing.

28 (B) Thorough documentation, including as-built drawings,
29 alignment sheets and specifications, design, construction, testing,
30 and maintenance records, demonstrating that the maximum
31 allowable operating pressure has been accurately established based
32 on the weakest pipeline section or facility component.

33 (7) Require owners and operators of commission-regulated gas
34 pipeline facilities to complete, by January 1, 2022, a modernization
35 program to upgrade key facilities located in high consequence
36 areas. The commission shall consult with owners and operators
37 and interested stakeholders in developing the program requirements
38 and schedule. The program shall contain criteria for prioritizing
39 critical gas pipeline facilities and ensure that all upgraded facilities
40 can accommodate state-of-the-art inspections, including internal

1 corrosion inspection methods. It is the intent of the Legislature
2 that state agencies expedite any necessary permit work or approval
3 that is necessary for any demolition, construction, repair,
4 replacement, inspection, or testing activity that may be required
5 pursuant to this paragraph.

6 (d) The commission shall adopt and enforce a one-call
7 notification program for the state consistent with the requirements
8 adopted by the Department of Transportation pursuant to Chapter
9 601 (commencing with Section 60101) of Subtitle VIII of Title 49
10 of the United States Code.

11 (e) The commission shall track proposed safety, reliability, and
12 facility integrity-related projects and activities for which a gas
13 corporation requested compensation in any rate request that was
14 granted by the commission in order to determine if the project or
15 activity was undertaken and completed. The commission shall
16 require any gas corporation that fails to undertake or complete
17 safety, reliability, and facility integrity-related projects and
18 activities for which the commission granted recovery in rates to
19 promptly make a public filing as to the justification for failing to
20 undertake or complete the proposed project or activity.

21 (f) In its general rate case, a gas corporation shall demonstrate,
22 to the satisfaction of the commission, each of the following:

23 (1) That its proposed rates will be sufficient to enable the gas
24 corporation to fund those projects and activities necessary to
25 maintain safe and reliable service and to meet federal and state
26 safety requirements in a cost-effective manner.

27 (2) If rate recovery was previously approved by the commission
28 for safety-related projects or activities, and the gas corporation
29 seeks to reprioritize use of the moneys for other safety-related
30 projects or activities, that the reprioritization is based on sound
31 risk management principles.

32 (3) If rate recovery is sought for safety-related projects or
33 activities, that an adequate safety assessment has been undertaken
34 on the gas pipeline facilities on which the projects or activities are
35 to be undertaken so that the projects and activities can be
36 undertaken in a thorough, yet cost-effective, manner without
37 incurring cost overruns.

38 (4) That any settlement agreement filed in the case that
39 encompasses safety-related projects or activities identifies those
40 projects and activities with specificity and allocates funding for

1 those projects and activities on a project-by-project, or
2 activity-by-activity basis.

3 ~~(g) A gas corporation shall not recover in rates any uninsured~~
4 ~~expense resulting from a fire, explosion, or other catastrophic event~~
5 ~~involving a commission-regulated gas pipeline facility when that~~
6 ~~event results from acts or omissions engaged in or directed by any~~
7 ~~officer or employee of the gas corporation with either the intent~~
8 ~~to cause harm, or with knowledge that harm was substantially~~
9 ~~certain to result.~~

10 SEC. 3. Section 770.6 is added to the Public Utilities Code, to
11 read:

12 770.6. (a) For purposes of this section, the following terms
13 have the following meanings:

14 (1) “Commission-regulated gas pipeline facility” has the same
15 meaning as defined in Section 770.5.

16 (2) “Compatible emergency response standards” means
17 emergency response standards that are applicable to intrastate
18 transmission and distribution lines that are in addition to, or more
19 stringent than, the minimum safety standards adopted by the United
20 States Department of Transportation pursuant to Chapter 601
21 (commencing with Section 60101) of Subtitle VIII of Title 49 of
22 the United States Code and that the commission is authorized to
23 adopt pursuant to Section 60104(c) of that chapter.

24 (b) On or before July 1, 2012, the commission shall open an
25 appropriate proceeding or expand the scope of an existing
26 proceeding to establish compatible emergency response standards
27 that owners or operators of commission-regulated gas pipeline
28 facilities shall be required to follow for intrastate transmission and
29 distribution lines. The commission shall establish the standards to
30 ensure that intrastate transmission and distribution lines have
31 emergency response plans that adequately prepare them for a
32 natural disaster or malfunction that could cause injury to human
33 life or property, with the purpose of minimizing the occurrence of
34 both.

35 (c) The commission shall establish the compatible emergency
36 response standards in consultation with the California Emergency
37 Management Agency and members of California’s first responder
38 community, including, but not limited to, members of the California
39 Fire Chiefs Association.

(d) The compatible emergency response standards shall require owners or operators of intrastate transmission and distribution lines to implement emergency response plans that are compatible with the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration's regulations concerning emergency plans contained in Section 192.615 of Title 49 of the Code of Federal Regulations, and those plans shall include, but not be limited to, all of the following requirements:

(1) Emergency shutdown and pressure reduction shall be utilized whenever deemed necessary and appropriate by the owners or operators to minimize hazards to life or property. An owner or operator shall notify appropriate first responders of emergency shutdown and pressure reduction.

(2) During an emergency response effort, the incident commander may direct coordination between first responders and owners or operators to ensure timely and ongoing communication on decisions for emergency shutdown and pressure reduction.

(3) Owners or operators of intrastate transmission and distribution lines shall establish and maintain liaison with appropriate fire, police, and other public officials to do all of the following:

(A) Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency, including, but not limited to, the role of the incident commander in an emergency.

(B) Acquaint the officials with the owner's or operator's ability in responding to a gas pipeline emergency.

(C) Identify the types of gas pipeline emergencies of which the owner or operator notifies the officials.

(D) Plan how the owner or operator and officials can engage in mutual assistance to minimize hazards to life or property, or both.

(E) Identify and update information on individual personnel responsible for the liaison with the appropriate first responder organizations.

(4) Owners and operators of intrastate transmission lines shall provide the State Fire Marshal and the chief fire official of the applicable city, county, city and county, or fire protection district with instructions on how to access and utilize the National Pipeline Mapping System developed by the United States Department of Transportation, Pipeline and Hazardous Materials Safety

1 Administration, utilizing data submitted pursuant to Section 60132
2 of Title 49 of the United States Code, to improve local response
3 capabilities for pipeline emergencies.

4 (e) (1) The commission shall report to the Legislature on the
5 status of establishing the compatible emergency response standards
6 on or before January 1, 2013.

7 (2) A report to be submitted pursuant to paragraph (1) shall be
8 submitted in compliance with Section 9795 of the Government
9 Code.

10 SEC. 4. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.